IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.16 of 1993.

Date of decision: October 23, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Ranvir Singh. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting?Yes.

For the Appellant: Mr.S.D. Vasudeva Addl. Advocate General with Mr. D.S.Nainta, Dy. Advocate General.

For the respondent: Mr. Vinay Thakur, Advocate, vice Mr. T.R. Chandel, Advocate.

Surjit Singh, J(oral):

Heard and gone through the record.

The respondent was sent up for trial for an offence punishable, under Section 376 of the Indian Penal Code, for allegedly raping a girl below 16 years of age in a village forest, in the month of March, 1991. A written complaint was lodged to the Judicial Magistrate, by the prosecutrix on 19th July, 1991 about the alleged incident of rape, in which it was alleged that she had been forcibly subjected to sexual intercourse and was threatened not to disclose this act to anybody and that later

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Whether reporters of local Papers may be allowed to see the judgment?

on, when she came to know that she was pregnant, she told the respondent about the said fact and he promised to marry her, but later on he backed out. The concerned Magistrate forwarded the complaint to the Station House Officer, Police Station, Rohru, for investigation. A case was formally registered against the respondent. The prosecutrix was got medically examined. It was found that she was carrying pregnancy of 18 to 20 weeks. The medical examination was conducted on 29th July, 1991. She was also subjected to ossification test, per which her skeletal age was 15 1/2 to 20 years. On the completion of investigation, respondent was challaned. The trial court has acquitted the respondent, holding that the evidence adduced by the prosecution is self contradictory and the age of the prosecutrix appears to be of more than 16 years, at the time of alleged incident and from her own version, it appears that she was a consenting party to the alleged act of sexual intercourse.

State has appealed against the aforesaid findings and order of acquittal.

We have heard the learned Additional Advocate General and gone through the record.

As already noticed, the prosecutrix alleged that she was subjected to sexual intercourse by use of force and was then put under the fear of death, but while appearing as PW1, the prosecutrix did not say that any force was used or any threat was administered after the act was committed. She stated that

she was given an assurance by the respondent that he would be marrying her.

Again in the complaint Ext.PA, there is mention of only one act of sexual intercourse, but while in the witness box, the prosecutrix stated that on the very next day of the first act of sexual intercourse, she was again subjected to sexual intercourse on the assurance that the respondent would marry her. In the complaint, it is recorded that the prosecutrix was carrying pregnancy of six months. The complaint is dated 19th July, 1991. The incident is alleged to have taken place in March, 1991. Now if the prosecutrix was carrying pregnancy of six months on 19th July, 1991, as mentioned in the complaint of that date, the pregnancy cannot be attributed to the respondent, because he allegedly raped the prosecutrix in March.

In the testimony of the prosecutrix, it is recorded that the respondent had assured/ promised to the prosecutrix only after the commission of the act of sexual intercourse. He allegedly reassured the prosecutrix when he was told that she was pregnant, because of the alleged coitus between him and the prosecutrix. It is not the case of the prosecution that the alleged promise or assurance, which is sought to be projected as an act of deceit practiced by the respondent, was made before the alleged act of sexual intercourse. Therefore, the presumption should be that the alleged act was committed with the consent of the prosecutrix.

Prosecution tried to show that the age of the prosecutrix was below 16 years, at the time when the alleged incident took place. Panchayat Secretary (PW6) Bhawani Singh was examined to prove a certificate of date of birth of the prosecutrix issued on the basis of the entry in the pariwar register. As per this certificate, the date of birth of the prosecutrix is 18.4.1975. The witness also produced a copy of entry in the Pariwar register Ext.PC. As per this entry also the date of birth of the prosecutrix is 18.4.1975. PW6 Bhawani Singh admitted in the cross-examination that the entries in the Pariwar Register about all the members of the family including prosecutrix were made in one go, meaning thereby that the entries in the said register were not made as and when the births in the family took place.

From an overall reading of the testimony of PW6 Bhawani Singh, it appears that the entries in the Pariwar register, copy Ext.PC, were made from the register of births and deaths. The said register was not produced during the course of trial. A reading of the testimony of Bhawani Singh (PW6) gives the impression that probably the register of births and deaths was with him when he was in the witness box. So, we ordered the Additional Advocate General to arrange for the production of the said register in this court, today. The Secretary, Panchayat Shri Prem Chand has appeared. He has brought with him only the pariwar register and states that no register of births and deaths for the period prior to the year 1985 is available in the records of the Panchayat. Under

these circumstances, neither the entry, copy Ext.PC, nor certificate issued on the basis of this entry by PW6 Bhawani Singh can be said to be an authenticated proof of the date of birth of the prosecutrix.

Prosecutrix was taken to the hospital for her medico legal examination by the police on 29th July, 1991. At the time of her medical examination, the prosecutrix disclosed to the Doctor that she had started menstruating at the age of 12 and that she menstruated for the first time six years back. This fact finds mention in Ext.PD, the MLC of the prosecutrix, which has been proved by the concerned Doctor, namely PW7 Dr. Suniti A. Ganju. As already noticed, the ossification test of the prosecutrix was also conducted and the Radiologist opined her age to be between 15½ to 20 years.

Looking to all the aforesaid facts and circumstances, we see no reason to interfere with the judgment of the trial court, which is based on proper appreciation of evidence. Hence, the appeal is dismissed.

(Surjit Singh)
Judge.

October 23, 2007
(PDS)

(Surinder Singh)
Judge.